

John Goddard, Gent. Appellant.
Sir John Swinton, Baronet, Respondent.

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The Appellant's CASE.

THAT in the Year 1675, the Respondent being at *London*, and dealing as a Merchant, before he was created a Baronet, he and *Robert Goddard*, the Appellant's late Father, deceas'd, and Nine other Persons, executed Articles of Agreement, dated the 18th of *June* 1675, under their Hands and Seals, to become Partners in a Ship call'd the *John and Thomas* of *London*, and her Cargo, to the value of 3800 *l.* on a Voyage to *Guinea*; and all the Parties, under a Penalty of 6000 *l.* covenanted to account with and pay each other for such Proceed of the said Cargo as should come to each Partners Hands.

THAT by these Articles Mr. *Goddard* is declar'd to have Four Parts of Thirty-two Parts in the said Ship and Cargo; and the Ship proving successful in her Voyage, return'd to the Port of *London* in 1677, and the Disposal of the Cargo she brought was committed to the Respondent's Management, as Cashier and Agent for the Partnership, and he receiv'd thereon to the value of 5403 *l.* 9 *s.* 4 *d.* whereof 675 *l.* 8 *s.* 8 *d.* was Mr. *Goddard*'s Share; And the Respondent having paid him 285 *l.* 8 *s.* 8 *d.* there remain'd due from the Respondent to Mr. *Goddard* 390 *l.*

THAT Mr. *Goddard* dying Intestate, his Widow and Administratrix *Ursula Goddard*, the Appellant's Mother, apply'd to the Respondent for payment of what so remain'd due from him to her Husband; and he refusing to pay it, she brought her Action of Covenant upon the Articles against him, in the Court of *Kings-Bench*, in 1680, for the whole 675 *l.* 8 *s.* 8 *d.* receiv'd by him, setting out in her Declaration the Covenant in the Articles, and alledging in Fact, That the Respondent was appointed Cashier of the said Cargo, and had receiv'd thereout 5403 *l.* 9 *s.* 4 *d.* and, That she brought that Action for 675 *l.* 8 *s.* 8 *d.* for her Intestate's Share of it.

THAT to this Declaration the Respondent demurr'd generally, whereby he admitted all the Facts in the Declaration to be true; and after several Adjournments, the Demurrer upon Argument was overruled, whereupon a Writ of Enquiry issued, which was executed, and the Jury, upon stating the Account, found the Respondent indebted to the Intestate 390 *l.* which Sum they assess'd for Damages to Mrs. *Goddard*, and thereupon in *Hilary* Term 1680 Judgment was sign'd and enter'd up for her against the Respondent for the said 390 *l.* and for 14 *l.* Costs, in all 404 *l.* Sterling.

THAT the Respondent being then unable to satisfy the said Debt, prevail'd on Mrs. *Goddard* not only to forbear suing Execution, but also

to discharge his Bail; and accordingly, on the 28th of *February* 1680, she by an Instrument executed under her Hand and Seal, and which was drawn and prepar'd by the Respondent, and attested by himself, taking notice of his Inability to pay the Debt so recover'd against him, she declar'd, that his Bail should stand discharg'd, and that they might be at liberty to vacate their Recognizance: And the Respondent, by a Writing endors'd on this Instrument, and sign'd by him and one of the Bail, declar'd, That no Clause or Expression mention'd in that Instrument should release the said Judgment, or preclude Mrs. *Goddard* from obtaining any Advantage upon the said Judgment against the Respondent, for the Recovery of her Debt due from the Respondent to her.

T H A T in 1689 the Respondent being restor'd to his Estate in *Scotland*, (upon the prospect of which Mrs. *Goddard* gave him Forbearance for her Debt) she apply'd to him for Payment of it, but he put her off, which oblig'd her to sue him in *Scotland*, whereupon she commenc'd a Suit against him the 28th of *October* 1700, before the Lords of Sessions, being within the Twenty Years after the Judgment was obtain'd in *England*, which was in *Hilary* Term 1680, and therein libel'd against the Respondent upon the said Judgment, praying their Lordships to interpose their Authority thereto, and that Sir *John* might be decerned to pay the said 404 *l.* Sterling with Interest, and that all Execution may be directed thereupon.

T H A T Sir *John* appear'd to this Libel, and took Copies thereof, and of the English Judgment, the Instrument for discharging his Bail, with his aforesaid Declaration endors'd upon it, and the said Articles of Co-partnership.

9th July, 1703 T H E Cause was heard before the Lord Ordinary, and the Respondent (tho' duly summon'd) not appearing, his Lordship decreed against him, according to the Prayer of the Libel.

T H A T in 1704 Mrs. *Goddard* died Intestate, and her Son the *Appellant* administering to her, and to his Father, in *Scotland*, reviv'd this Suit, and obtain'd several Interloquitory Decrees before the Lord Ordinary, against which the Respondent appeal'd to the Lords of the Session.

T H A T on the 2d of *February* 1708, the Lords of the Session sent back the Cause to the Lord Ordinary, to state the whole Matter, and report the same to them; and then the Points in question before the Lord Ordinary were,

First, *Whether the Judgment obtain'd in England shall be taken as Res Probata, and shall be admitted a Sufficient Proof of this Debt without any other Evidence.*

Secondly, *Whether the Instrument for discharging the Respondent's Bail, and his Declaration endors'd upon it, shall be deem'd an Homologation (that is to say, an Assent or Confirmation) of the Judgment.*
And,

Thirdly, *Whether Interest (which there they call Annual Rent) ought to be paid for this Debt vel ex Pacto, vel ex Jure.*

13 July, 1709 T H E said Cause, and the Debates thereon, being reported by the Lord Ordinary to the Lords of the Session, their Lordships decreed, That the aforesaid Declaration executed by the Respondent doth *homologate*, (that is to say, *confirm*) and excludes all Objections against the said Judgment.
THE

26 July, 1709. THE *Respondent* Petition'd for a Rehearing, to which the *Appellant* put in his Answer; and the Cause being reheard, their Lordships reject-
ed the Petition, and adher'd to their former Interloquitor.

28 July, 1709. THE Cause came back to the Lord Ordinary, and his Lordship, in
respect of the Lords Interloquitor in presence, decrees against the *Respon-*
dent, according to the Prayer of the Libel.

29 July, 1709. ON the *Respondent's* Petition, alledging, That the *Appellant's* Father
was not a Partner in the said Ship and Cargo, and praying a short Hear-
ing upon the Point of *Homologation*, their Lordships directed a Rehearing,
and thereupon the Lord Ordinary stopt the Entering of the former Decree,

13 Febr. 1711 Their Lordships consider'd of the Debates on this Point, which they
heard on the Day of June, 1710, and decreed, That the Declaration
granted by the *Respondent* does not *homologate* and exclude Objections
against the said Judgment.

3d Dec. 1713. Upon Considering the Debates on another Point in this Cause as to the
Validity of the English Judgment: Whether it ought to be sustain'd as
Res Indicata, and *Probative* of the Appellant's Claim, their Lordships
pronounc'd this Decree, *viz.* The said Lords sustains the Judgment of
the Queen's-Bench, the Pursuer instructing that *Goddard* was Copartner,
and that Sir *John* was Cashier, and had Intromission to make him liable
for *Goddard's* Proportion.

The Appellant has appeal'd to your Lordships from the said Decrees of
the 13th of February 1711 and the 3d of December 1713.

First, Because the Judgment ought to be allow'd to be a sufficient
Proof of the Matters now directed to be prov'd over again; and the
rather since it appears from the Judgment that the Respondent by De-
murring generally had admitted and confess'd these very Facts (*inter*
alia) to be as they are set forth in the Declaration, *viz.* That the Ap-
pellant's Father was Copartner, and that the Respondent was Cashier
of the said Cargo, and had receiv'd the Proceed of it: Besides which, by
the Articles of Copartnership produc'd and read at all the Hearings, and
admitted by the Respondent to be his Act and Deed, it is manifest that
the Appellant's Father was Copartner.

Secondly, For that the Instrument for discharging of the Respondent's
Bail, which is attested as a Witness by himself, wherein he declar'd
that he was not then able to pay the said Debt, and his Note under his
Hand endorsed upon it. Whereby he agrees, that nothing contain'd in
that Instrument shall release the said Judgment, or preclude Mrs. *Goddard*
from recovering thereon the Debt due to her from the Respondent; are
such Acknowledgments of the said Debt, and such an Establishment of
the said Judgment, and of the several material Facts in the Declaration
mention'd, on which the said Judgment is grounded, as amount to a
perfect *Homologation*, or Confirmation of the same.

WHEREFORE it is humbly hoped, That the said Interloquitors or Decrees
of the 13th of February, 1711, as also the Interloquitor of the 3d of
December, 1713, so far as it directs the proving over again of those
Facts that have been already prov'd, shall be Revers'd; and, That the
former Interloquitors by them set aside, and decreeing the Appellant his
said Debt and Interest, shall be Affirm'd; and, That the Appellant
shall have his Costs of the Proceedings below.

ROB. RAYMOND
SAM. MEAD.

35 to 39.
Notes for La Touche to copy to the

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John Goddard, Gent. Appellant,
A G A I N S T
Sir John Swinton, Bar^t Respondant.

The Appellant's CASE.

To be Heard at the Bar of the
House of LORDS, on Tuesday
the 30th of August, 1715.

July 10 - June 1605

0.1: *Tortax godthorpe*
E. godthorpe

No. 2. *Small* (abstract in manuscript)

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Robert
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